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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,910	12/22/2003	Thomas Herrmann	BCR-10102/29	8376

7590 07/27/2005

John G. Posa
Gifford, Krass, Groh, Sprinkle,
Anderson & Citkowski, P.C.
280 N. Old Woodward Ave., Suite 400
Birmingham, MI 48009-5394

EXAMINER

JACKSON, ANDRE L

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/748,910	Applicant(s) HERRMANN, THOMAS	
	Examiner Andre' L. Jackson	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2005.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-15 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 13 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

HA

DETAILED ACTION

Drawings

The replacement drawings were received on May 13, 2005. These drawings are approved by the Examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,182,334 to Davancens in view of USPN 2,704,961 to Weil. Davancens discloses an end fastener (12) for use with a pair of eyeglasses (14) having manually operated, elongated temple legs (16), the end fastener comprising;

a sleeve (34) of pliable material having an open end, a closed end (32), an internal length and a cylindrical internal cross-sectional dimension and a wall thickness; and wherein the internal length appears to be in the order of 2.5 cm or less and the internal cross-sectional dimension appears to be in the order of 1 cm or less (Figs. 2 & 3) and the wall thickness, including the closed end is of a dimension, however, Davancens does not specifically disclose the specific measurements as claimed. Weil teaches a support for a pair of eyeglasses comprising a sleeve (14) of pliable material having an open end (15) and an opposite closed end. The sleeve further defines an internal length and a cylindrical internal cross-sectional dimension and a

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uniform wall thickness from the open end to the closed end as seen in Fig. 4. The sleeve is designed as such to ensure frictional engagement to prevent separation or loss from the pair of eyeglass arms (12). Moreover, Weil teaches modification of the support to connect with eyeglasses having a various styles, shapes and sizes. Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the end fastener of Davancens to incorporate the support as taught by Weil, to provide a resilient end fastener designed to ensure frictional engagement to prevent separation or loss from a pair of eyeglass having a various styles, shapes and sizes.

Regarding claim 2, although Davancens discloses that the internal cross-section is circular, it would be obvious to one of ordinary skill in the art that this shape can be rectangular as well to be received onto temple legs that are substantially rectangular in shape, thus providing an end fastener adaptable to fit onto various shapes of temple legs with a secure grip.

As to claims 4-6, 9 and 12, Davancens discloses that the end fastener is composed of a outer body or overlay (30) with an internal core or liner (38). The pliable material of the end fastener is an elastomeric material having a hardness value within the claimed range (col. 5, lines 25-27).

As to claims 7, 8, 10, 11 and 13-15, Davancens in view of Weil does not disclose the specific measurements of the end fastener and support as claimed. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Response to Applicant's Arguments

Applicant's arguments filed in the Amendment of May 13, 2005 have been fully considered but they are not persuasive. In response to applicant's remarks on page 4 of the above amendment and applicant's amendment to the claims, #2,704,961 to Weil has been cited and applied in combination with Davancens to meet the limitations of applicant's amended claims as an obvious-type rejection. Accordingly, claims 1-15 remain rejected as being unpatentable over Davancens in view of Weil.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' L. Jackson whose telephone number is (571) 272-7067.

The examiner can normally be reached on Mon. - Fri. (9:30 am - 6 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

André L. Jackson
Patent Examiner
AU 3677

ALJ


ROBERT J. SANDY
PRIMARY EXAMINER



REPLACEMENT DRAWING SHEET
Serial No. 10/748,910
Inventor: Herrmann

replacement sheets 1-5 are approved

6-2)

7/20/05

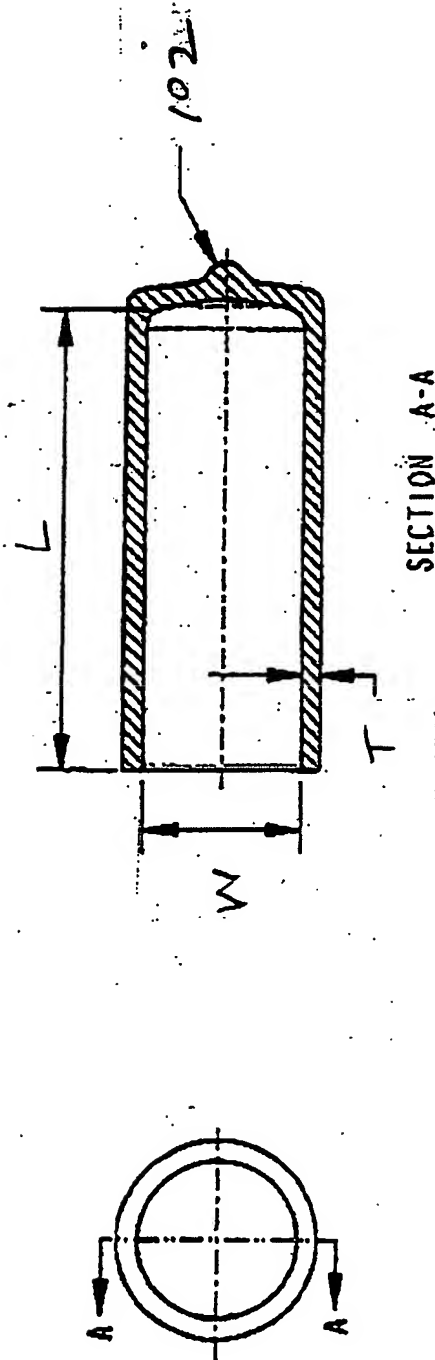


FIGURE 1